



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 05-022

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

1. Statutory Authority

Section Phar 6.09 should make clear that the board or its designee would not have authority to grant a variance from statutory requirements, some of which appear to conflict with the rule’s intent. In particular, under s. 450.06 (3), Stats., no pharmacy may be open for practice following a change of location unless the pharmacy is licensed at the new location, notwithstanding any remaining period of validity under the pharmacy’s license at the previous location. Under s. 450.06 (2) (b), Stats., the specific location of a pharmacy must be inspected and found to meet all the requirements of ch. 450, Stats., before the board may issue a license to operate a pharmacy at that location. If the board believes that ability to grant a variance from these statutory requirements is advisable during times of disaster, it should pursue statutory changes first.

4. Adequacy of References to Related Statutes, Rules and Forms

Section Phar 6.09 (1) does not specify from what rules a variance may or may not be granted. The comparison in the analysis with rules in adjacent states sets forth variance-related rules in Illinois and Indiana, both of which specify from what rules the variance may be granted. For example, the Illinois rule does not permit a variance to be granted from certain provisions, including those that are statutorily mandated, and the Indiana rule specifies that a temporary variance from any rule adopted by the board may be requested, except for “rules concerning examinations, experience hours, and requirements for licensure.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the second paragraph of the plain language analysis on page 2, in the second sentence, the “s” should be deleted from “maintains.”

b. Section Phar 6.09 (1) would be clearer if “upon conditions necessary to...” were changed to “if the board or its designee determines that the variance is necessary to....” Also, “man-made” should replace “manmade.”

c. In sub. (2), are there limits on the number of times an extension may be granted or the length of time of extensions? This should be clarified. Also, it should be clarified that extensions are subject to the criterion under sub. (1)--“necessary to protect the public health, safety and welfare.”